

DE 88-22 - May 27, 1988

**Resign-to-Run Law
Section 99.012(2), (7), F.S.**

To: Mr. Gary E. Hogsten, 5444 Fulmer Drive, Tampa, Florida 33625

Prepared by: Division of Elections

This is in reference to your request for an advisory opinion on the Resign-to- Run Law. You are a deputy sheriff and will qualify as a candidate for county commission on July 18, 1988. The Division of Elections has authority under Section 106.23(2), Florida Statutes, to issue an advisory opinion to you relating to the Florida Election Code, Chapter 97-106, Florida Statutes. You inquired regarding:

1. Whether you must take a leave of absence from your position as deputy sheriff of Hillsborough County prior to qualifying to run for county commission?
2. If you must take a leave of absence prior to qualifying, when should such leave be effective?

In reference to your first question, whether you must take a leave of absence from your position prior to qualifying to run for county commission, the Resign-to- Run Law requires an elected or appointed officer to irrevocably resign when seeking an elected office which runs concurrently with the term of office he presently holds. Section 99.012(2), Fla. Stat.

Section 99.012(7), Florida Statutes, provides an exemption from the Resign-to- Run Law for three categories of persons: an officer who is a subordinate personnel, a deputy sheriff, or police officer. Each of these three need not resign unless seeking to qualify for a public office which is currently held by an individual who has the authority to appoint, employ, promote or otherwise supervise that person and has qualified for reelection to that office.

A deputy sheriff is an officer but because of the exemption contained in Section 99.012(7), Florida Statutes, he need not resign to run for office unless he is seeking to qualify for a public office which is currently held by an individual who has the authority to appoint, employ, promote or otherwise supervise him and that person has qualified for reelection. Since this does not apply in your situation, you need not resign but must take a leave of absence without pay during the period in which he is seeking election.

Also applicable to your qualifying for public office is the Hillsborough County Civil Service Act of 1985 (hereinafter, the Act). Chapter 85-424, Laws of Fla., Chapter 82-301, Laws of Fla. Because you are a Hillsborough County Deputy Sheriff, you fall within the Act's category of subordinate personnel.

The Act's Section 18 closely adheres to Section 99.012(7), Florida Statutes, by providing:

No subordinate personnel need resign upon qualifying for any compensated, elected public office unless such individual is seeking to qualify for a public office which is currently held by an individual who has the authority to appoint, employ, promote, or otherwise supervise that subordinate personnel and who has qualified as a candidate for reelection to that public office.... However, any such personnel shall take a leave of absence without pay from his employment during the period in which he is seeking election to public office.

Chapter 85-424, S. 18, Laws of Fla.

Because you are a subordinate personnel within the meaning of both the Act and Section 99.012(7), Florida Statutes, you must take a leave of absence without pay from your position during the period in which you seek election to public office.

In reference to your second question, when should your leave of absence be effective, the Division has discussed this in previous opinions this year. Op. Div. Elec. Fla. 88-20, 88-18, 88-04, 88-03. We addressed the First District Court of Appeal's decision in Humphries v. Dept. of Highway Safety and Motor Vehicles, which held that the leave of absence provision is triggered when a person is "seeking election" which is manifested by such activities as hiring a campaign manager and preparing and distributing leaflets, cards and other election paraphernalia. 400 So.2d 1311 (Fla. 1st DCA 1981).

Simply announcing your candidacy or designating a campaign treasurer and a campaign account will not trigger the leave of absence provision of Section 99.012(7), Florida Statutes. Op. Div. Elect. Fla. 88-20, 88-18, 88-04, 88-03. In addition, the acceptance of contributions and expenditure of funds is permissible so long as the individual is preparing to seek election and is not actively "seeking election." Op. Div. Elect. Fla. 88-20, 88-18.

However, it appears that from information you have submitted to our office, that you are actively seeking election as county commissioner. You have prepared and distributed campaign slogan cards which state that you are a candidate for county commissioner. And, although you have not hired a campaign manager, you have a team of volunteers who perform the duties of a campaign manager. The Humphries decision does not mandate that a person must hire a campaign manager before he "seeks election." The Humphries decision focus on a person's activities which signaled to the general public that the person is a candidate and is actively seeking election to a particular office. Your activities, in our opinion, have signaled to the general public that you are a candidate for county commissioner and, in fact, actively seeking election to that office. Therefore, it is our opinion that you should immediately take a leave of absence from your position as deputy sheriff.

SUMMARY

A deputy sheriff who is running for Hillsborough County Commissioner must take a leave of absence when actively seeking election. In having a team of volunteers who performs the duties of a campaign manager and by preparing and distributing campaign slogan cards, a candidate has signaled to the general public that he is actively seeking election and must immediately, therefore, take a leave of absence from his position as deputy sheriff.